

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	MB Docket No. 14-82
)	
PATRICK SULLIVAN)	FRN 0003749041, 0006119796,
(Assignor))	0006149843, 0017196064
)	
and)	Facility ID No. 146162
)	
LAKE BROADCASTING, INC.)	File No. BALFT-20120523ABY
(Assignee))	
)	
Application for Consent to Assignment of)	
License of FM Translator Station W238CE,)	
Montgomery, Alabama)	

To: Marlene H. Dortch, Secretary
Attn: The Commission

**ENFORCEMENT BUREAU'S OPPOSITION TO LAKE'S APPEAL OF RULING
DENYING MOTION TO DISQUALIFY PRESIDING JUDGE**

1. On May 9, 2017, Lake Broadcasting, Inc. (Lake) filed a motion to disqualify the Presiding Judge in this matter, alleging, without any evidence, that he has “demonstrated bias and prejudice against Lake and Lake’s president, sole owner and director, Michael S. Rice.” (Motion).¹ The Enforcement Bureau (Bureau) opposed Lake’s Motion, arguing, *inter alia*, that it was untimely and unsubstantiated, relying solely on the Presiding Judge’s interlocutory evidentiary rulings, which the Commission has recognized cannot form the basis for disqualification.² On August 28, 2017, the Presiding Judge denied Lake’s Motion.³ Lake

¹ See Motion to Disqualify the Presiding Judge, filed May 9, 2017 (Motion); *see also* Declaration of Jerold L. Jacobs, Esq. Concerning the Motion To Disqualify Chief ALJ Richard L. Sippel, attached to the Motion.

² See Enforcement Bureau’s Response to Lake’s Motion to Disqualify the Presiding Judge, filed May 18, 2017. *See id.* at 3.

³ See *Memorandum Opinion and Order*, FCC 17M-31 (ALJ, rel. Aug. 28, 2017) (*Order*).

appealed the Presiding Judge's *Order* on August 30, 2017.⁴ For the reasons set forth below, the Acting Chief, Enforcement Bureau, through her attorneys, opposes Lake's Appeal.

Opposition

2. Lake's Appeal fails to present any basis upon which to challenge the Presiding Judge's *Order*. The Appeal, like the underlying Motion, appears to rely solely upon evidentiary rulings the Presiding Judge made against Lake before and during the hearing.⁵ Specifically, Lake challenges the Presiding Judge's admission of Mr. Rice's probation records from the Missouri Department of Corrections and the Bureau's expert testimony related thereto, arguing that it demonstrates the Presiding Judge's "bent of mind" against Lake and Mr. Rice.⁶ Lake fails to offer any legal support for why such evidence should not have been admitted into the record. Indeed, Lake's own expert relied on these same probation records in forming her opinion.⁷ Moreover, both of the Bureau's experts testified that these records constitute pertinent and necessary evidence required to form an expert opinion about Mr. Rice's rehabilitation and the likelihood he will re-offend.⁸ Omitting them would have been an abdication of the Presiding Judge's responsibility in this case.

3. Accordingly, the Bureau respectfully submits that Lake has failed to meet the substantial burden of showing that the Presiding Judge has a personal bias or prejudice against

⁴ See Appeal Ruling Denying Motion to Disqualify Presiding Officer; Request for Oral Argument filed August 30, 2017 (Appeal). Lake served this Appeal by mail. Pursuant to Sections 1.301(c)(7), 1.4 (g), and 1.4(h) of the Commission's rules, oppositions to this Appeal are due by September 12, 2017.

⁵ Lake concedes that it has no basis other than evidentiary rulings on which to ground its Appeal. See Appeal at 2. Notwithstanding, Lake alleges, without foundation, that the Presiding Judge "feared being reversed by the Commission as he was in the David Titus case." Appeal at 4.

⁶ See Appeal at 3-4.

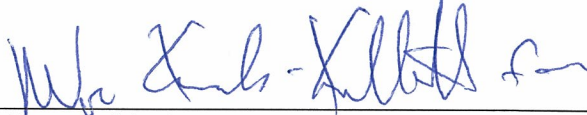
⁷ See, e.g., Hearing Transcript, dated May 4, 2017, at 415:12-18 (Testimony of Lake's expert, Dr. Ann Duncan-Hively).

⁸ See, e.g., Hearing Transcript, dated May 5, 2017, at 569:12-570:19 (Testimony of the Bureau's expert, Dr. Kimberly Weittl); Hearing Transcript, dated May 5, 2017 at 502:25-503:6 (Testimony of the Bureau's expert, Tamara Gremminger).

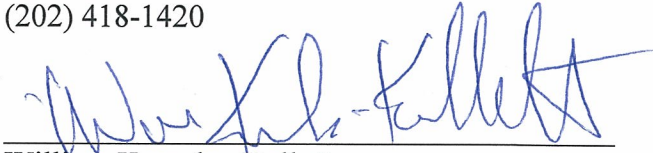
either Lake or Mr. Rice that would impair his ability to act in an impartial manner. As such, the Bureau respectfully submits that Lake's Appeal should be denied.

Respectfully submitted,

Rosemary Harold
Acting Chief, Enforcement Bureau



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September 5, 2017

CERTIFICATE OF SERVICE

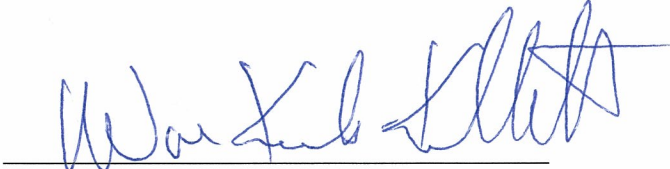
William Knowles-Kellett, an attorney in the Enforcement Bureau's Investigations & Hearings Division, certifies that he has on this 5th day of September, 2017, sent by first class United States and by email copies of the foregoing ENFORCEMENT BUREAU'S OPPOSITION TO LAKE'S APPEAL OF RULING DENYING MOTION TO DISQUALIFY PRESIDING JUDGE to:

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And caused copies of the foregoing to be served via hand-delivery to:

Marlene H. Dortch, Secretary
Federal Communications Commission
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The Honorable Richard L. Sippel
Chief Administrative Law Judge
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